

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AMY JOSEPH, individually and on Behalf of All Others Similarly Situating,)	
)	No. 21 CV 1340
)	
Plaintiff,)	Magistrate Judge Young B. Kim
)	
v.)	
)	
INVENTURE FOODS, INC.,)	
)	June 6, 2023
Defendant.)	

PRELIMINARY APPROVAL ORDER

WHEREAS, a class action is pending before the Court in the above captioned matter;

WHEREAS, Plaintiff (“Plaintiff” or “Settlement Class Representative”), for herself and on behalf of the proposed Settlement Class, and Inventure Foods, Inc., (“Inventure” or “Defendant”) have entered into a Settlement Agreement (ECF No. 59-1), filed on May 24, 2023;

WHEREAS, the proposed Settlement Agreement, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed Settlement and dismissal of the Action with prejudice upon the terms and conditions set forth in the Settlement Agreement; and

WHEREAS, this matter is before the Court upon the agreement of the Parties and Plaintiff’s Motion seeking: (a) preliminary approval of the Settlement; (b) appointment of Plaintiff as Class Representative; (c) appointment of Thomas A.

Zimmerman, Jr., Jeffrey D. Blake, Matthew C. De Re, and Sharon Harris on behalf of Zimmerman Law Offices, P.C. as Class Counsel; (d) conditional class certification for settlement purposes only; (e) appointment of Class-Settlement.com as Settlement Administrator; and (f) authorization of Notice of the Settlement.

The Court has reviewed and considered Plaintiff's Motion, including all exhibits and documents accompanying same. Good cause being shown, IT IS HEREBY ORDERED, DECREED, AND ADJUDGED, as follows:

1. Terms and Phrases. The terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement and this Order.

2. Certification of Settlement Class. A plaintiff settlement class (the "Conditional Settlement Class") is conditionally certified pursuant to Federal Rule of Civil Procedure 23 for settlement purposes only.

A. The Conditional Settlement Class is defined to include the following:

All persons who, during the Class Period, purchased in the United States any size or variety of the Eligible Products, as that term is defined below. Excluded from the Class are: (a) Inventure's board members or executive-level officers; (b) persons who purchased the Eligible Products primarily for the purpose of resale, including, but not limited to, retailers or re-sellers of the Eligible Products; (c) governmental entities; (d) persons who timely and properly exclude themselves from the Class as provided in the Agreement; and (e) the Court, the Court's immediate family, and Court staff.

"Class Period" means the period from January 1, 2017, up to, and including July 31, 2022.

"Eligible Product(s)" means any and all shelf stable (*i.e.* not refrigerated or frozen) TGIF brand Snacks of any size, style, flavor, and variety, manufactured, distributed or sold by Inventure that are or were labeled with the phrase "TGI Fridays Mozzarella Sticks Snacks" or any other

words or phrases to convey the same or similar meanings, including without limitation:

- a. TGI Fridays Mozzarella Sticks Snacks Original;
- b. TGI Fridays Mozzarella Sticks Snacks Original Flavor; and
- c. TGI Fridays Mozzarella Sticks Snacks Original Flavor Baked.

- B. The Conditional Settlement Class appears to satisfy the requirements for class certification under Rule 23 for settlement purposes in that it appears: (1) the Settlement Class is so numerous that joinder of all members is impractical, and it likely consists of thousands of members in light of Defendant's data on sales of Eligible Products; (2) there are questions of law or fact common to the Settlement Class, such as whether the Eligible Products contain mozzarella cheese, whether Defendant misrepresented to Plaintiff and Class Members that the Eligible Products contain mozzarella cheese, and whether Defendant omitted and concealed the fact that the Eligible Products contain cheddar cheese during the Class Period; (3) the representative Plaintiff's claims are typical of those of the Settlement Class, as their claims are based on the same legal and factual issues concerning Defendant's alleged misrepresentations and omissions concerning the Eligible Products during the Class Period; (4) the representative Plaintiff and Class Counsel have and will fairly and adequately represent the interests of the Settlement Class, and there are no apparent conflicts of interest between members of the Settlement Class; and (5) questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class.
- C. Consequently, the Settlement Class appears to satisfy the requirements of Rule 23(b)(3) for settlement purposes only.

3. Appointment of Class Representative. The Court hereby appoints Plaintiff Amy Joseph as Settlement Class Representative and she shall perform all the duties of the Class Representative as set forth in the Settlement Agreement, including the exhibits annexed thereto, and this Order.

4. Appointment of Class Counsel. The Court hereby appoints Thomas A. Zimmerman, Jr., Jeffrey D. Blake, Matthew C. De Re, and Sharon Harris on behalf

of Zimmerman Law Offices, P.C. as Class Counsel and they shall perform all the duties of the Class Counsel as set forth in the Settlement Agreement, including the exhibits annexed thereto, and this Order.

5. Appointment of Settlement Administrator. Class-Settlement.com is hereby appointed as Settlement Administrator and shall perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement, including the exhibits annexed thereto, and this Order. Class-Settlement.com's fees, costs and expenses for fulfilling all the duties of the Settlement Administrator as set forth in the Settlement Agreement, including the exhibits annexed thereto, and this Order, shall not exceed \$160,000.

6. Conditional Findings/Approvals. Subject to the Final Approval Hearing, the Court finds that:

- A. It has jurisdiction over the subject matter of this Action and over all Parties to the Action, including all members of the Settlement Class;
- B. The Settlement Agreement falls within the range of possible approval as fair, reasonable, adequate, and is in the best interests of the Settlement Class;
- C. The Settlement Agreement substantially fulfills the purposes and objectives of a class action, and provides beneficial relief to the Settlement Class;
- D. The Settlement Agreement: (1) is the result of serious, informed, non-collusive arms' length negotiations involving experienced counsel familiar with the legal and factual issues of this case and made with the assistance of this Court; (2) is sufficient to warrant Notice of the Settlement and the Final Approval Hearing to the Settlement Class; (3) meets all applicable requirements of law, including Rule 23, and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a finding or admission of liability by Defendant;

- E. The Notice Program is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the conditional certification of the Settlement Class, the terms of the proposed Settlement Agreement, and the right of members to object to the Settlement or to exclude themselves from the Class; and
- F. The Notice Program is consistent with the requirements of Rule 23 and due process and constitutes the best notice practicable under the circumstances.

7. Notice and Claims Administration Procedures and Protocols.

The Court hereby conditionally approves the Notice Program, including the proposed Notice documents attached as Exhibits 2 and 6 to the Settlement Agreement. The Court also conditionally approves the plan for Claims administration, including the Revised Claim Form to the Settlement Agreement, and the Settlement Claim Procedures and Claim Calculation Protocol, attached as Exhibit 7 to the Settlement Agreement. The Parties may, by written agreement, revise the Notice or Claim Form documents in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

8. Dissemination of Notice. In accordance with the Settlement Agreement, and subject to the requirements of the Settlement Agreement and this Order, the Settlement Administrator shall provide Notice pursuant to the Notice Program as follows by July 10, 2023 (the “Notice Date”):

- A. On or before the Notice Date, the Settlement Administrator shall disseminate the Summary Settlement Notice, as specified in the Settlement Agreement and as set forth in the Declaration of the Settlement Administrator;
- B. On or before the Notice Date, the Settlement Administrator shall publish the Class Notice on the Settlement Website, as specified in the

Settlement Agreement and as set forth in the Declaration of the Settlement Administrator; and

- C. On or before the Notice Date, the Settlement Administrator shall establish and activate the Settlement Website with the URL address www.InventureSettlement.com for public accessibility and post to it the Settlement Agreement, Claim Form (Exhibit 1 to the Agreement as revised); Class Notice (Exhibit 2 to the Agreement as revised); and Summary Notice (Exhibit 6 to the Agreement).

9. Submission of Claims. Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid and timely Claim Form. The Claim Period shall expire on September 25, 2023. Claim Forms shall be deemed to have been timely submitted when they are postmarked, if mailed, or when they are electronically submitted on the Settlement Website.

10. Exclusions. Settlement Class Members who wish to exclude themselves from the Settlement Class for purposes of this Settlement may do so by submitting a request for exclusion to the Settlement Administrator not later than August 22, 2023 (the “Exclusion Deadline”). The Exclusion Deadline shall be clearly posted on the Class Notice, available at the Settlement Website, www.InventureSettlement.com. The request for exclusion must comply with the exclusion procedures set forth in the Class Notice and include from the settlement Class Member: (a) their full name; (b) mailing address; (c) a clear statement communicating that they elect to be excluded from the Settlement Class; (d) the case name and case number; and (e) their signature. A request for exclusion may not request exclusion of more than one member of the Settlement Class.

Any member of the Settlement Class who timely requests exclusion consistent with these procedures may not file an objection to the Settlement and shall be deemed

to have waived any rights or benefits under this Settlement. However, Settlement Class Members who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment and Order, including, without limitation, the releases contained therein, regardless of whether they have requested exclusion from the Settlement.

11. Objections. Any member of the Settlement Class who has not timely filed a request for exclusion may object to the granting of final approval to the settlement. Settlement Class Members may object on their own or may do so through separate counsel at their own expense. Any written objection to the Settlement must comply with the objection procedures set forth in the Settlement Agreement and Class Notice, and include: (1) a written statement of the objections, as well as the specific reason(s), if any, for each objection, including any legal support the Class Member wishes to bring to the Court's attention; (2) any evidence or other information the Class Member wishes to introduce in support of the objections; (3) a statement of whether the Class Member intends to appear and argue at the Fairness Hearing; (4) the amount of time for speaking that will be requested by the objector at the Fairness Hearing; (5) if the Class Member or counsel for the Class Member has objected to a class action settlement on any prior occasion, the objection shall also disclose all cases in which they have filed an objection by caption, court and case number, and for each case, the disposition of the objection; and (6) a statement of the objector's membership in the Settlement Class, including all information required by the Claim Form.

Objections must be submitted to the Court by filing the written objection through the Court's Case Management/Electronic Case Files system, or by any other method the Court accepts filings. Furthermore, a copy must be delivered to Class Counsel, to Inventure's Counsel, and to the United States District Court for the Northern District of Illinois, Clerk's Office, 219 South Dearborn Street, Chicago, IL 60604.

Objections must be filed by August 22, 2023 (the "Objection Deadline"). The Objection Deadline shall be clearly posted on the Class Notice, available at the Settlement Website, www.InventureSettlement.com. If the objector is represented by counsel, said counsel shall request admission to the Northern District of Illinois for the purposes of the objection.

Any member of the Settlement Class who fails to file and serve a timely written objection in compliance with the requirements of this Order and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

12. Fairness Hearing. A fairness hearing (the "Final Approval Hearing" or "Fairness Hearing") shall be held on October 30, 2023, at 11:00 a.m. in Courtroom 1019 of the United States District Court for the Northern District of Illinois, located at 219 South Dearborn Street, in Chicago to consider: (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be given final approval by the Court; (b) whether this matter should be finally certified as a class action pursuant

to Rule 23(b)(3); (c) whether a final judgment should be entered; (d) whether to award payment of Attorneys' Fees and Expenses to Class Counsel and in what amount; and (e) whether to award payment of a Service Award to the Plaintiff and in what amount. The Court may adjourn the Fairness Hearing without further notice to Class Members.

13. Petition for Service Award. Plaintiff and Class Counsel may petition the Court for a Service Award for Plaintiff to be paid out of the Settlement Fund. Papers supporting such petition shall be filed with the Court and posted to the Settlement Website no later than August 8, 2023, and such petition may be supplemented by October 9, 2023. All supplemental papers submitted in further support of the petition shall also be filed with the Court and posted to the Settlement Website.

14. Request for Attorneys' Fees and Expenses. Class Counsel may make an application to the Court for Attorneys' Fees and Expenses incurred up to the submission of the application to the Court to be paid out of the Settlement Fund. Such application must be filed with the Court no later than August 8, 2023, and may be supplemented by October 9, 2023. All supplemental papers submitted in further support of the application shall also be filed with the Court and posted to the Settlement Website.

15. Request for Final Approval of Settlement. Motion in support of final approval of the Settlement shall be filed with the Court and posted to the Settlement Website no later than October 9, 2023.

16. Injunction. In order to protect its jurisdiction, to consider the fairness of the Settlement Agreement, and to enter a Final Order and Judgment having binding effect on all Settlement Class Members, the Court hereby enjoins all members of the Settlement Class, and anyone who acts or purports to act on their behalf, from pursuing all other proceedings in any state or federal court that seeks to address rights or claims of any Released Party or Settlement Class Member relating to, or arising out of, any of the Released Claims.

17. Binding Effect. Settlement Class Members shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

18. Stay of Proceedings. All discovery and pretrial proceedings and deadlines are stayed and suspended until further notice from the Court, except for such actions as are necessary to implement the Settlement Agreement and this Order.

19. Termination and *Status Quo Ante*. In the event that the Settlement Agreement is terminated pursuant to the provisions of the Settlement Agreement, then certification of the Settlement Class and the findings of this Court contained in this Order pertaining to class certification for settlement purposes, will be vacated, and the Parties will be returned to their positions *status quo ante* with respect to the Action as if the Settlement had not been entered into. In the event the Final Judgment is not achieved: (a) any court orders preliminarily or finally approving the certification of any Class contemplated by the Settlement and any other orders

entered pursuant to the Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support of or in opposition to a class certification motion; and (b) the Settlement Agreement will become null and void (with the exception of Section XI.D. therein) and shall have no force or effect, the Parties shall not be bound by the Settlement, the Parties will be returned to their respective positions existing immediately before the execution of the Settlement, and all of the Parties' respective pre-Settlement claims and defenses will be preserved, and the fact of the Settlement, that named defendants did not oppose the certification of any class under the Settlement, or that the Court approved the certification of a Settlement Class, shall not be used or cited thereafter by any person or entity, including in any contested proceeding relating to the certification of any class in any matter or proceeding, including the Action.

ENTER:



Young B. Kim
United States Magistrate Judge